

An Update on Michigan Sentencing Law & Procedure Seminar & Webcast

**September 28, 2004
Michigan Hall of Justice
Lansing, Michigan**

Sex Offender Registration Act

Materials Prepared by:

**Hon. Richard Ryan Lamb
9th Circuit Court
Kalamazoo, Michigan**



**Michigan Judicial Institute
Michigan Hall of Justice
P.O. Box 30205
Lansing, Michigan 48909
517/373-7171**

Michigan Department of State Police

Background Information on Michigan Sex Offender Registration Act

Federal Laws

1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act 42 USC 14071

- Required states to establish specific requirements for persons convicted of certain crimes against minors and convicted of sexually violent offenses or to incur a 10% reduction in their Byrne Formula Grant Funding.
- Michigan's allocation is approximately \$15 million annually, distributed to each county by formula.

1996 Megan's Law

- Information gathered by a state registration program may be disclosed for any purpose permitted under the laws of the state.

1996 Pam Lychner Act

- Requires a lifetime registration requirement for certain serious offenders and recidivists.

1998 Appropriations Act for the Department of Commerce, Justice and State (CJSA)

- Registration based on range of offenses specified by state law. Must be comparable to or which exceeds the range of offenses described in The Jacob Wetterling Act.

State Laws

1994-1995 Michigan's Sex Offenders Registration Act

- Senator Lana Pollack sponsored the main piece of legislation creating the MI Sex Offenders Act (Public Acts 286, 287, 294 and 355 of 1994.)
 - 1) Require registration and any change of address of persons convicted of certain sexual offenses or on parole for these offenses after October 1, 1995. This includes juveniles.
 - Register current and any change of address with local law enforcement.
 - 2) Minimum registration of 25 years. Lifetime registration for second or subsequent offense.
 - 3) 4 year felony for failure to comply with registration requirements.

- This information was available to law enforcement only. (FOIA exempt)

1996 Michigan's Sex Offenders Registration Act

- Public Act 494 of 1996, sponsored by Senator Michael Bouchard made the names on the registry available to the public via their local law enforcement agency.

1999 Michigan's Sex Offenders Registration Act

- Public Act 85 of 1999, sponsored by Senator Bev Hammerstrom made several amendments to the Sex Offenders Registration Act.
- Public Sex Offender Registry Internet available.
- The list of offenses for required registration was expanded.
- Offender required to register a current address for 25 years after conviction or a ten-year minimum measured from the date the person was released from prison and placed on parole, supervised release, or probation, whichever is longer.
- State residents sex offenders who move to another state must report the change of address to the Michigan State Police and must comply with any registration requirement in the new state of residency.
- A registrant is required to verify his or her address with the local law enforcement agency four times per year if the person is registered for one or more of the felony listed offenses.
- A registrant is required to verify his or her address with the local law enforcement agency one time per year if the person is registered for one of the listed misdemeanor offenses.

Sex Offender Registration Statistics

As of December 2002:

- 31,045 total registered sex offenders
- 2,034 juveniles
- 488 out of state
- 11,675 incarcerated
- 1,313 absconders
- 15,109 compliant (November 2002)
- Compliance Rate for Address Verification: 82%
- Internet database does not include juveniles, out of state, incarcerated, or absconders.



MICHIGAN

Public Sex Offender Registry (PSOR) Inquiry

Searching the Sex Offender Database

Web Site Disclaimer - Please read

The Michigan State Police (MSP) has established this web site as the official Internet source for Sex Offender Registration information. The Sex Offender Registration open record information is extracted from the MSP Sex Offender Registration database.

The information provided through this web site is public record. It is made available for the purpose of protecting the public. However, it is your responsibility to make sure the records you access through this site pertain to the person about whom you are seeking information. Extreme care should be exercised in using any information obtained from this web site. Neither the MSP nor the state of Michigan shall be responsible for any errors or omissions produced by secondary dissemination of this information. Anyone who uses this information to commit a criminal act against another person is subject to criminal prosecution. However, information provided by convicted sex offenders is often submitted intentionally in error.

If you believe that any of the information found in these records is in error, or you would like additional information, please contact the local law enforcement agency where the sex offender resides.

I have read the disclaimer and agree to the terms.

[Michigan.gov Home](#) | [MSP Home](#) | [State Web Sites](#) | [Contact MSP](#)
[Privacy Policy](#) | [Link Policy](#) | [Accessibility Policy](#)
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An Update of Michigan Sentencing Law & Procedure
September 28, 2004
Hall of Justice Conference Center
Lansing, Michigan

Sex Offender Registration Act MCL 28.721, *et seq.*

- ❖ Requires registration and any change of address of persons convicted of certain sexual offenses or on parole for those offenses after October 1, 1995. Juveniles are included in this requirement.
- ❖ Requires registration of current and any change of address with local law enforcement.
- ❖ Minimum registration is 25 years.
- ❖ Four year felony for failure to comply with registration requirements.
- ❖ Misdemeanor offense for willful failure to sign a registration, notice or verification.
- ❖ Juvenile registrants are not on the MSP website.
- ❖ One convicted of a listed offense and granted Holmes status will appear on the Michigan State Police website open to the public, but will not appear on a criminal case history inquiry.
- ❖ A juvenile offender treated as an adult will appear on the website. On order from a judge a juvenile offender will appear on the website and a juvenile convicted of CSC 1 or 2, upon attaining the age of 18 will appear on the website.
- ❖ The Michigan State Police will not register an offender convicted under the catchall provision of SORA, MCL 28.722(e)(x) unless ordered by a judge.
- ❖ Registration under the catchall provision is determined by the underlying facts which give rise to the charge, not merely the conviction offense. People v Meyers, 250 Mich App 637 (2002).
- ❖ Assignment to HYTA is a conviction under SORA requiring registration. People v Rahilly, 247 Mich App 108 (2001) lv den 465 Mich 969 (2002).
- ❖ Failure to notify a local law enforcement agency of a change of address must be willful and a defendant's probation officer does not qualify as a local law enforcement agency. People v Lockett, 253 Mich App 651 (2002).
- ❖ SORA has recently been amended by Public Acts 237, 238, & 240. The effective dates of Acts 237 and 240 are October 16 and October 1, 2004. Act 238 will become effective May 1, 2005.
- ❖ Public Act 239 amends the Holmes Youthful Trainee Act. This amendment is effective October 1, 2004. A person convicted of almost any sexual offense is not eligible for Holmes status under Act 239.

Helpful information available:

- ❖ Charlotte A. Marshall, Michigan State Police Registration Analyst
Telephone: (517) 322-4939, FAX: (517) 322-4957
- ❖ Karen Johnson, Michigan State Police Registration Analyst
Telephone: (517) 322-4938, FAX: (517) 322-4957



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
EAST LANSING



COL. TADARIAL J. STURDIVANT
DIRECTOR

June 10, 2003

Mr. Tom Furtaw, Bureau Chief
Office of the Attorney General
Criminal Justice Division
G. Mennen Williams Building – 7th Floor
525 West Ottawa
P.O. Box 30212
Lansing, Michigan 48909

Dear Mr. Furtaw:

The Michigan Department of State Police requests assistance from your agency in addressing the recent problem of prosecutorial discretion allowing individuals charged with offenses requiring registration on the Sex Offender Registry to avoid the registration requirements. Specifically, individuals charged with crimes requiring registration have been allowed to plead to offenses that are remote to the originally charged offense and thereby avoiding the Sex Offender Registry. Recently, our Sex Offender Registration Unit has been overwhelmed with inquiries and cases from various law enforcement agencies requesting whether individuals, who have had their original charge (a registerable offense) pled to offenses such as felony seduction, assault and battery, child abuse, etc., are still required to register as a convicted sex offender.

To illustrate the point, the following are a few examples of cases received by our Sex Offender Registration Unit that highlight the crisis. A father was charged with two counts of Criminal Sexual Conduct First Degree and two counts of Criminal Sexual Conduct Second Degree, the victim being his 14-year-old daughter. He pled to Aggravated Assault and is currently not on the public registry. A 17-year-old male was charged with Criminal Sexual Conduct First Degree, the victim being a 12-year-old girl. He pled to Child Abuse and is also currently not on the public registry. Additionally, your office is quite familiar with the court order issued by a judge on two occasions ordering that offenders convicted of felony seduction not be placed on the registry.

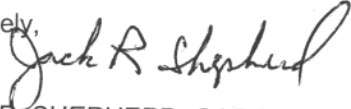
A Michigan Court of Appeals case, People v Meyers, 250 Michigan App 637 2001, held that the "behavior underlying the criminal offense should be examined to determine whether it is subject to registration." Our department would like clarity on whether the court means the behavior underlying the original arrested offense or the subsequent convicted offense. Additionally, under the "catch all" provision of MCL 28.722(e)(x), the inquiry to determine if a subject has committed a registerable crime depends on whether an offense is "by its nature" a "sexual offense against an individual less than 18 years of age." Would this "catch all" provision provide the justification for registering those individuals who are originally charged with a registerable offense and subsequently plead to a non-registerable offense?

Mr. Tom Furtaw
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June 10, 2003

Our goal is to enforce the provisions of the Sex Offender Registration Act as intended when enacted by the Legislature. However, the current state of the law and its enforcement require your guidance in examining these issues.

If further information is needed, please contact F/Lt. Kari Kusmierz at (517) 336-6326 or Sgt. James Bennett in the Executive Resource Section at (517) 336-6441.

Sincerely,

A handwritten signature in cursive script, reading "Jack R. Shepherd". The signature is written in dark ink and is positioned above the typed name.


JACK R. SHEPHERD, CAPTAIN
Commanding Officer
Executive Division

DEPARTMENT OF
ATTORNEY GENERAL
M E M O R A N D U M

September 12, 2003



TO: Capt. Jack Shepherd
Executive Division
Michigan State Police

FROM: Thomas P. Furtaw 
Senior Deputy Director
Criminal Justice Bureau

RE: Sex Offender Registration Act (SORA), MCL 28.721, et al

You advise that the Michigan State Police (MSP) receive a significant number of convictions that may require registration under SORA's catch-all provision, MCL 28.722(d)(x). These cases, while grounded in sexual misconduct, are usually convictions by plea for offenses such as assault and battery, seduction, etc.

The catch-all provision of SORA was discussed at length in *People v Meyers*, 250 Mich App 637, 2002. In *Meyers*, the defendant pled guilty to utilization of the internet to communicate with a person for the purpose of attempting to commit conduct prescribed under MCL 750.145a, specifically MCL 750.145d(1)(b). In addition to probation, the trial court ordered the defendant to register pursuant to SORA. Meyers appealed, as the offense for which he was convicted was not a specifically enumerated offense under SORA.

MCL 28.722(d)(x) mandates registration as a sex offender for conviction of "any other violation of the law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age." Therefore, a defendant must register if a three-part test is met. First, the defendant was convicted of a state law violation or a municipal ordinance violation. Second, the offense, by its nature, constitutes a sexual offense; and third, the victim is under 18 years of age. The second element relates to your inquiry. The court observed that, "...the Legislature did not define what it meant by a violation that 'by its nature,' constitutes a 'sexual offense'." The court, therefore, determined that "by its nature" referred to "inherent qualities" and a "sexual offense" was any offense that is "of or pertaining to sex." The court further stated:

"However, not all of these other substantive crimes are inherently related to sex. The stalking, aggravated stalking, felony inducement, and kidnapping statutes do not include any language reference to prohibited sexual acts or intent. Similarly, though accosting a child contrary to MCL 750.145a explicitly includes the possibility that the criminal conduct at issue was sexual in nature in that the statute refers to 'sexual intercourse,' accosting a child may also consist of nonsexual acts, such as 'delinquency.'"

"At first blush, this possibility--that the conduct that each of these statutes prohibits might not require a sexual component--suggests that these are not statutes that encompass inherently sexual offenses. However, by referring to 'sexual offenses,' rather than 'sexual offense statutes,' the language of MCL 28.722(d)(x) directs us to examine the unique nature of the criminal conduct underlying the charge that the defendant violated a state law or municipal ordinance to determine whether the criminal conduct was inherently sexual. Only the facts of the individual 'offense' itself will reveal whether the stalking, kidnapping, felony inducement, or accosting offense was inherently sexual, as this second element requires."

Therefore, the offense for which one is convicted is not controlling. The underlying facts which give rise to the charge, not merely the conviction offense or facts elicited in the allocution, control whether the registration requirements of SORA are triggered. In many of the cases that have been brought to our attention, the underlying facts involved CSC conduct ranging from touching to penetration, but were pled as assault and battery, seduction, etc. Such factual underpinnings would trigger the registration requirements of SORA.

I trust the above answers your inquiry. If you have any further questions, please advise.

c: Wally Hart
Leo Friedman

MICHIGAN SEX OFFENDER REGISTRATION

Portions of this registration are **confidential**. Disclosure of confidential information is protected by the Federal Privacy Act.

THIS SECTION FOR INITIAL REGISTRATION

MDOC _____

REGISTRATION	REGISTRANT NAME (Last, First, Middle)			ALIAS(S)				
	STREET ADDRESS		APT/LOT	CITY		STATE	ZIP	COUNTY
	DATE OF BIRTH		SOCIAL SECURITY		STATE ID		FBI	
	DRIVER LICENSE		RACE	SEX	HEIGHT	WEIGHT	HAIR	EYE
	PLACE OF BIRTH	SKIN TONE	SMT		FINGERPRINT CLASSIFICATION			
	DNA AVAILABLE	DNA LOCATION						BLOOD TYPE
	DATE REGISTERED	REGISTRATION DURATION <input type="checkbox"/> 10 YEARS <input type="checkbox"/> 25 YEARS <input type="checkbox"/> LIFETIME		EXEMPT FROM VERIFICATION? <input type="checkbox"/> YES <input type="checkbox"/> NO		VERIFICATION REQUIREMENT <input type="checkbox"/> QUARTERLY <input type="checkbox"/> YEARLY		
CONVICTION	OFFENSE		STATUTE	DOCKET	COUNTY	STATE	DATE OF CONVICTION	
	OFFENSE		STATUTE	DOCKET	COUNTY	STATE	DATE OF CONVICTION	
	TYPE OF REGISTRATION <input type="checkbox"/> MICHIGAN <input type="checkbox"/> OUT OF STATE <input type="checkbox"/> FEDERAL/ MILITARY <input type="checkbox"/> TRIBAL		CONVICTION TYPE <input type="checkbox"/> JUVENILE ADJUDICATION <input type="checkbox"/> ADULT CONVICTION <input type="checkbox"/> HYTA		DATE OF OFFENSE		VICTIM'S AGE AT OFFENSE	
					CTN			
REMARKS								
CAMPUS	CAMPUS CODE	CAMPUS CITY			<input type="checkbox"/> STUDENT <input type="checkbox"/> NO LONGER ATTENDING		<input type="checkbox"/> EMPLOYEE <input type="checkbox"/> NO LONGER EMPLOYED	
	CAMPUS CODE	CAMPUS CITY			<input type="checkbox"/> STUDENT <input type="checkbox"/> NO LONGER ATTENDING		<input type="checkbox"/> EMPLOYEE <input type="checkbox"/> NO LONGER EMPLOYED	

THIS SECTION FOR VERIFICATION AND CHANGE OF ADDRESS

<input type="checkbox"/> CHANGE OF ADDRESS	<input type="checkbox"/> ADDRESS VERIFICATION	<input type="checkbox"/> MOVING OUT OF STATE	<input type="checkbox"/> INCARCERATED			
SYSIDNO	REGISTRANT NAME (Last, First, Middle)		DRIVER LICENSE			
STREET ADDRESS		APT/LOT	CITY	STATE	ZIP	COUNTY

THIS SECTION FOR RECEIPT OF \$35 REGISTRATION FEE PAYMENT

PAYMENT MADE <input type="checkbox"/> YES <input type="checkbox"/> NO	METHOD OF PAYMENT	REASON FOR NONPAYMENT	SIGNATURE OF REGISTERING OFFICIAL
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SIGNATURES	SIGNATURE OF OFFENDER		SIGNATURE OF PARENT OR GUARDIAN	
	SIGNATURE OF REGISTERING OFFICIAL		PRINTED NAME OF REGISTERING OFFICIAL	
	REGISTERING AGENCY	ORI	DATE	(M.C.L.A. 28.721, 1994 PA 295, Amended 1996, 1999, 2002, 2004)

Mail to: Michigan State Police, Criminal Justice Information Center, Sex Offender Registration, 7150 Harris Drive, Lansing, MI 48913

Clear Form

EXPLANATION OF DUTIES TO REGISTER AS A SEX OFFENDER

Pursuant to Michigan Public Act 295 of 1994 as amended in 1996, 1999, and 2002, and in accordance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 United States Code 14071), Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (42 United States Code 14072), and the Campus Sex Crimes Prevention Act (42 United States Code 14071), you are hereby notified of your responsibilities to register as a convicted sex offender.

Offender must initial each of the following:

- _____ I understand that it is my duty to register as a sexual offender. **I understand that failure to sign the form(s) is a misdemeanor and shall result in criminal prosecution.**
- _____ I understand that I must register for a period of 25 years or a minimum of 10 years after being released from prison, whichever is longer. I understand that registration will be for LIFE for a second or subsequent conviction of a registerable offense or for a first conviction of one of the following crimes: 750.520b: Criminal Sexual Conduct 1st Degree; 750.520c(1)(a): Criminal Sexual Conduct 2nd Degree (Person under 13); 750.349: Kidnapping; 750.350: Child Kidnapping; 750.145c(2)(3): Child Sexually Abusive Commercial Activity, or the attempt of any of the above listed offenses.
- _____ I understand that if I was adjudicated as a juvenile or sentenced under the Holmes Youthful Trainee Act, I may be eligible to petition the court for alternative registration duration. I understand that it is my responsibility to petition the sentencing court in a manner prescribed by the court.
- _____ I understand that within ten days of changing my residence, I must report in person to the local law enforcement agency, sheriff's department, or State Police post having jurisdiction over my residence and provide the new address. **I understand that failure to report a change of address is a felony and shall result in criminal prosecution.**
- _____ I understand that within fourteen days of moving into this state, if I am registered or required to be registered as a sex offender in another state, I must register as a sex offender at the local law enforcement agency, sheriff's department, or State Police post having jurisdiction over my residence. **I understand that failure to report a change of address is a felony and shall result in criminal prosecution.**
- _____ I understand that ten days prior to changing my residence to another state, I must report in person to the nearest State Police post and provide my new address. Upon moving, I shall comply with the registration requirements of that state. **I understand that failure to report a change of address is a felony and shall result in criminal prosecution.**
- _____ I understand that I shall maintain either a valid Michigan operator or chauffeur license or Michigan personal identification card with digitized photograph. The address on this card shall match my current address on the sex offender registry. This card may be used as proof of residence. Other proof of residency may be required, such as a voter registration card or utility bill. I understand that my digitized photograph will be included on the public sex offender registry web site.
- _____ I understand that I shall pay a one-time registration fee of \$35.00. I understand that if I am determined to be indigent by the collecting agency, this fee will be waived temporarily. **I understand that failing to pay the registration fee is a misdemeanor and shall result in criminal prosecution.**
- _____ I understand that I shall have my fingerprints taken, if not already on file with the department of State Police. I understand that those fingerprints will be forwarded to the Federal Bureau of Investigation, if not already on file with the Federal Bureau of Investigation. I understand that I must be reprinted if my fingerprints were expunged and/or returned to me.
- _____ I understand that if I am registered for a misdemeanor listed offense, I shall verify my address between January 1 and January 15 of each year and if I am registered for a felony listed offense, I shall verify my address during the first fifteen days of January, April, July and October of each year. During this verification, I shall report to the local law enforcement agency, sheriff's department, or State Police post having jurisdiction over my address and provide proof of residency. **Note: 750.520e: Criminal Sexual Conduct 4th Degree is a felony listed offense. I understand that failing to verify my address is a misdemeanor and shall result in criminal prosecution.**
- _____ I understand that if I attend, am employed, or volunteer at an institute of higher learning, I must report in person the name and location of the campus as well as my status either as a student or employee to my local law enforcement agency, sheriff's department, or State Police post. I understand that any change in status must be reported within 10 days. **I understand that failure to report status at an institute of higher learning is a felony and shall result in criminal prosecution.**
- _____ I acknowledge that I have read and/or had read to me, the above requirements as set forth by statute.

SIGNATURE OF OFFENDER

SIGNATURE OF PARENT OR GUARDIAN (JUVENILE OFFENDERS ONLY)

TO BE COMPLETED BY NOTIFYING OFFICIAL (DO NOT LEAVE SECTIONS BLANK)

PRINTED NAME OF OFFENDER _____ DATE OF BIRTH _____

SSN _____ SID _____ FBI _____ DOC/Prison _____

I certify that I specifically informed the offender of his/her duties as set forth above and he/she indicated to me an understanding of those duties.

SIGNATURE OF NOTIFYING OFFICIAL

PRINTED NAME/RANK OR POSITION OF NOTIFYING OFFICIAL

NOTIFYING AGENCY _____ DATE _____

Mail the original to: Michigan State Police, Criminal Justice Information Center
Sex Offender Registration
7150 Harris Drive
Lansing, MI 48913

(M.C.L.A. 28.721, 1994 MI P.A. 295,
Amended 1996, 1999, 2002, 2004)

Sex Offender Databases by State

Alabama

<http://www.dps.state.al.us/public/abi/system/so/>

Alaska

<http://www.dps.state.ak.us/nSorcr/asp/search.asp>

Arizona

<http://www.azsexoffender.org/>

Arkansas

<http://www.acic.org/soff/index.php>

California

No online database

Contact information available at:

<http://caag.state.ca.us/megan/content/cdinfo.htm>

Colorado

<http://sor.state.co.us/default.asp>

Connecticut

<http://www.state.ct.us/dps/sor.htm>

Delaware

<http://www.state.de.us/dsp/sexoff/index.htm>

District of Columbia

<http://mpdc.dc.gov/serv/sor/sexoffender.shtm>

Florida

http://www3.fdle.state.fl.us/sexual_predators/search.asp?

Georgia

<http://www.ganet.org/gbi/sorsch.cgi>

Hawaii

No online database

Idaho

http://www.isp.state.id.us/identification/sex_offender/soApp/so_viewer/search.jsp

Illinois

<http://www.isp.state.il.us/sor/frames.htm>

Indiana

https://secure.in.gov/serv/cji_sor

Iowa

<http://www.iowasexoffender.com/search.php>

Kansas

<https://www.accesskansas.org/registered-offender/index.html>

Kentucky

<http://kpsor.state.ky.us/>

Louisiana

<http://www.lasocpr.lsp.org/Static/Search.htm>

Maine

<http://www.informe.org/cgi-bin/sor/step1.pl>

Maryland

<http://www.dpscs.state.md.us/sorSearch/>

Massachusetts

No online database

Contact information available at:

http://www.mass.gov/sorb/Info_Page.htm

Michigan

<http://www.mipsor.state.mi.us/mipsor/default.htm>

Minnesota

<http://www.doc.state.mn.us/level3/Search.asp>

Mississippi

<http://www.sor.mdps.state.ms.us/>

Missouri

<http://www.mshp.dps.missouri.gov/MSHPWeb/PatrolDivisions/CRID/SOR/SORPage.html#SOR>

Montana

<http://svor2.doj.state.mt.us:8010/>

Nebraska

<http://www.nsp.state.ne.us/sor/find.cfm>

Nevada

<http://www.nvsexoffenders.gov/Search.aspx>

New Hampshire

<http://oit.nh.gov/nsor/>

New Jersey

http://www.njsp.org/info/reg_sexoffend.html

New Mexico

<http://www.nmsexoffender.dps.state.nm.us/>

New York

http://www.criminaljustice.state.ny.us/nsor/search_index.htm

North Carolina

http://sbi.jus.state.nc.us/cgi-bin/HAHT/hsrun.hse/SOR/SOR/SOR.htm?start=HS_SORSearchFrames

North Dakota

<http://www.ndsexoffender.com/scripts/bci.ag/owSearch.w>

Ohio

<http://www.esorn.ag.state.oh.us/Secured/p1.aspx>

Oklahoma

http://docapp8.doc.state.ok.us/servlet/page?_pageid=190&_dad=portal30&_schema=PORTAL30

Oregon

Select counties available at:

<http://www.publicrecordfinder.com/states/oregon.html>

Pennsylvania

No online database

E-mail request form available at:

<http://www.psp2.state.pa.us/SVP/index.htm>

Rhode Island

No online database

South Carolina

http://www.sled.state.sc.us/SLED/default.asp?Category=SCSO&Service=SCSO_01

South Dakota

No online database

Contact information available at:

<http://dci.sd.gov/administration/id/sexoffender/about.htm>

Tennessee

http://www.ticic.state.tn.us/SEX_ofndr/search_short.asp

Texas

<http://records.txdps.state.tx.us/soSearch/soSearch.cfm>

Utah

<http://corrections.utah.gov/asp-bin/sexoffendersearchform.asp>

Vermont

No online database

Contact information available at:

http://www.dps.state.vt.us/cjs/s_registry.htm

Virginia

<http://sex-offender.vsp.state.va.us/Static/Search.htm>

Washington

<http://ml.waspc.org/index.aspx>

West Virginia

<http://www.wvstatepolice.com/sexoff>

Wisconsin

Select counties available at:

<http://offender.doc.state.wi.us/public/>

Wyoming

http://attorneygeneral.state.wy.us/dci/so/so_registration.html

An Update on Michigan Sentencing Law & Procedure Seminar & Webcast

**September 28, 2004
Michigan Hall of Justice
Lansing, Michigan**

Sex Offender Registration Act New Legislation and Sexual Offenders

Materials Prepared by:

**Ms. Susan LeDuc, J.D.
Chief of the Appellate Division
Ingham County Prosecutor's Office
Lansing, Michigan**



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NEW LEGISLATION AND SEXUAL OFFENDERS

2004 PA 32 - effective 6-30-04

Added a new section 9b to MCL 770.9 and 9a which provides that:

A defendant convicted of a sexual assault of a minor and awaiting sentence
“shall be detained and shall not be admitted to bail”

A defendant convicted of sexual assault of a minor sentenced to a term of imprisonment who has filed an appeal or an application for leave to appeal **“shall be detained and shall not be admitted to bail”**

“Minor” is defined as an individual less than 16 years of age

“Sexual assault of a minor” is defined as CSC 1st, 2nd, 3rd and

Subsection(a) of CSC 3rd (penetration of 13 to 16) the actor must be 5 or more years older than the victim

Assault with intent to commit CSC under any of the circumstances listed above

2004 PA 237 - effective 10-16-04

Added the payment of a one time \$35 registration fee for offenders under SORA and a corresponding crime for failing to pay the registration fee

An individual who willfully refuses or fails to pay the registration fee within 90 days of the date the individual reports is guilty of a 90 day misdemeanor

Of the \$35 collected by a court or law enforcement, \$25 shall be forwarded to the department (MSP), which shall be deposit the money in the sexual offenders registration fund (also newly created in this legislation) and \$10 shall be retained by the court or law enforcement

2004 PA 238 - effective 5-1-05

Added a requirement that part of the MSP database shall include a picture of each registered offender and mandated that the department (MSP) obtain photos from the Secretary of State

2004 PA 239 - effective 10-1-04

Amends the Holmes Youthful Trainee Act adding that HYTA does not apply to

violations, attempted violations or conspiracy to violate CSC 1st, 2nd, 3rd or 4th **except** CSC 3rd if the victim is 13 to 16 [MCL 750.520d(1)(a)] and CSC 4th if the victim is 13 to 16 and the actor is 5 or more years older than the victim [MCL 750.520e(1)(a)]

violations, attempted violations or conspiracy to violate assault with intent to commit any CSC with the same exceptions as listed above

A court **“shall not assign an individual to the status of youthful trainee if any of the following apply:”**

defendant was previously convicted of or adjudicated of a offense which required registration under SORA

defendant is currently charged with a sexual offense that requires registration under SORA **and the defendant fails to carry the burden of establishing by *clear and convincing evidence* that he or she is not likely to engage in further listed offenses**

the court determines that the offense involved any of the following

- a factor set forth in section 750.520b(1)(b) to (h)
- a factor set forth in section 750.520c(1)(b) to (l)
- a factor set forth in section 750.520d(1)(b) to (e)
- a factor set forth in section 750.520e(1)(b) to (f)

Beginning 1-1-2005, a court may place a person on HYTA probation status and may may include drug court as a term of probation

2004 PA 240 - effective 10-1-04

Amended the registration act to provide for some ability to allow for some leniency in registration for youthful sexual offenders

Section 8c (1) was added to MCL 28.721 *et seq* (SORA) which allows for certain defendants to petition the court for special limited registration if

(1) a person was convicted as a juvenile of CSC 1st, 2nd or 3rd (or attempt/ conspiracy) **and if either of the following apply**

- the person was under 13 when he or she committed the offense and is not more than 5 years older than the victim**

- the person is 13 but less than 17 when he or she committed the offense and is not more than 3 years older than the victim**

- (2) a person who was charged with charged with “statutory age” factors of CSC 1st, 2nd or 3rd and was convicted as a juvenile of CSC 4th or Ass/CSC and if either of the following apply

the person was under 13 when he or she committed the offense and is not more than 5 years older than the victim

the person was 13 but less than 17 when he or she committed the offense and is not more than 3 years older than the victim

- (3) a person who has successfully completed his or her probationary period under HTYA for committing a listed sexual offense and has been discharged from YTA status

Individuals convicted of sexual offenses before 10-1-04 in all 3 categories may petition for special registration; only individuals convicted of sexual offenses on or after 10-1-04 in categories 1 and 2 may petition for special registration

The petition must be filed in the court of conviction and **shall be filed before October 1, 2007 or within 3 years after the defendant is discharged from juvenile court jurisdiction, or has successfully completed YTA status, whichever is later**

The petition is the sole means of judicial review of registration requirements under SORA

The petition is made under oath; the court shall conduct a hearing on the petition

The prosecuting attorney must receive copy of petition at least 30 days prior to the hearing and must notify the victim, who has the right to be present and make a written or oral statement to the court before any decision on the petition

The court shall consider all of the following:

**the individual’s age and level of maturity at the time of offense
the victim’s age and level of maturity at the time of the offense
the nature of the offense
the severity of the offense
the individual’s prior juvenile or criminal history
the individual’s likelihood to commit further listed sexual offenses
any impact statement submitted by the victim
any other information deemed relevant by th court**

The court shall *not* grant the petition if any of the following apply

the individual was previously convicted of listed sexual offense
the individual fails to carry the burden of proof *by clear and convincing evidence* that he or she is not likely to commit further sex offenses
the court determines that the offense involved any of the following
 a factor set forth in section 750.520b(1)(a) to (h)
 a factor set forth in section 750.520c(1)(a) to (l)
 a factor set forth in section 750.520d(1)(b) to (e)
 a factor set forth in section 750.520e(1)(b) to (f)
the individual is charged with a felony in this state or elsewhere
 other than the sexual offense felony for which he or she has petitioned
 although the court may hold the petition in abeyance
the individual was sentenced for the sexual offense as an adult (except successful completion of YTA)

A court may hold a petition in abeyance if the individual is charged with a new felony until the charges are finally disposed of

Section 8d was also added to SORA

A person described in (1) and (2) [CSC convictions as a juvenile] shall register until the court grants the petition but is not subject to being added to the MSP database in section 8(2)

A person described in (3) [HYTA cases] above for which the petition is granted shall register under this act for a period of 10 years after the date initially registered , or if the individual was in a state correctional facility, for 10 years after release from the facility, whichever is greater and subject to section 8(2)

If the court orders a person to described in (3) pending the court's determination of the petition, the court shall provide a copy to MSP and the individual. The person will not be entered into the database until ordered to do so by the court or the expiration of the order, whichever occurs first

If the court grants the petition of a person described in (3) MSP shall not enter the registration in the database if it is given a copy of the order and shall remove the registration from the database if already there

An Update on Michigan Sentencing Law & Procedure Seminar & Webcast

**September 28, 2004
Michigan Hall of Justice
Lansing, Michigan**

Sex Offender Registration Act

Reference Material

- 2002 MJI Sexual Assault Benchbook
§ 11.2 Sex Offenders Registration Act
- **UPDATES** 2002 MJI Sexual Assault Benchbook
§ 11.2 Sex Offenders Registration Act (green)



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CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

F. Yearly or Quarterly Verification of Domicile or Residence

Effective October 1, 2002, 2002 PA 542 amended MCL 28.725a(5) to require law enforcement officers to verify not only the registered individual's residence and domicile but also "any information required to be reported under section 4a [MCL 28.724a, governing campus reporting]."

1. Yearly Verification ("Misdemeanor Listed Offenses")

Effective October 1, 2002, 2002 PA 542 amended the definition of "misdemeanor listed offense" under MCL 28.725a(4)(a) to include the following offense:

- Accosting, enticing or soliciting a child under 16 for immoral purpose if committed before June 1, 2002, MCL 750.145a.

Note: This statutory change was made to incorporate the Legislature's redesignation of MCL 750.145a from a misdemeanor to a felony, effective June 1, 2002. 2002 PA 45.

2. Quarterly Verification ("Felony Listed Offenses")

Effective October 1, 2002, 2002 PA 542 amended the definition of "felony listed offense" under MCL 28.725a(4)(b) to include the following offense:

- Accosting, enticing or soliciting a child under 16 for immoral purpose if committed on or after June 1, 2002, MCL 750.145a.

Note: This statutory change was made to incorporate the Legislature's redesignation of MCL 750.145a from a misdemeanor to a felony, effective June 1, 2002. 2002 PA 45.

G. Public Notification and the Computerized Databases

Effective October 1, 2002, 2002 PA 542 amended MCL 28.728(3)(b) to require additional information that must be contained within the computerized compilation. Thus, the following information should be inserted after the last bullet on p 524 of the *Sexual Assault Benchbook*:

- F** The name and campus location of each institution of higher education to which the individual is required to report under MCL 28.724a [governing campus reporting].

Furthermore, 2002 PA 542 renumbered the statutory citation containing the required contents of each computerized SORA registration from MCL 28.728(2) to MCL 28.728(3)(a). Accordingly, the statutory citation in the last sentence of the first paragraph under subsection (G) of the *Sexual Assault Benchbook* should be redesignated “MCL 28.728(3)(a).”

CHAPTER 11

Sex Offender Identification and Profiling Systems

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I. Confidentiality of Registration and Criminal Penalties for Disclosure of Non-Public Information

Effective October 1, 2002, 2002 PA 542 amended MCL 28.730(1) to also protect as confidential any “report under section 4a [MCL 28.724a, governing campus reporting]” in addition to the registration.

Effective October 1, 2002, 2002 PA 542 amended the maximum penalties for an individual who violates MCL 28.730(4) (divulging, using, or publishing nonpublic information concerning registrations in violation of SORA) from 90 days and/or \$500.00 to **93 days and/or \$1,000.00**.

J. National Reporting of Michigan Registrations

Effective October 1, 2002, 2002 PA 542 added the following agencies that must receive SORA’s registration, notice, and verification information under MCL 28.727(8):

- F Sheriff’s departments; and
- F State Police posts.

1. Public Inspection At Law Enforcement Agencies During Regular Business Hours

Effective October 1, 2002, 2002 PA 542 added the following requirement under MCL 28.728(4):

“The [State Police] shall provide the ability to conduct a computerized search of the compilation based upon the name and campus location an institution of higher described in subsection (3)(b) [MCL 28.728(3)(b)].”

K. Registration Violation Enforcement; Venue and Penalties

2. Penalties

Effective October 1, 2002, 2002 PA 542 amended the maximum penalties for an individual who fails to comply with MCL 28.725a (yearly and quarterly verification) from 90 days or a maximum fine of \$500.00 to **93 days or a maximum fine of \$1,000.00**. MCL 28.729(2).

Effective October 1, 2002, 2002 PA 542 amended the maximum fine for an individual who willfully fails to sign a registration, notice, or verification as provided in MCL 28.727(4) (registration form) from \$500.00 to **\$1,000.00**. MCL 28.729(3).

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Sex Offender Identification and Profiling Systems

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L. Pertinent Case Law Challenging Registration Act

Insert the following sub-subsection and case summary after sub-subsection 8 on p 531:

9. Failure to Register and Mens Rea Requirement

A violation of MCL 28.729 for a “willful” failure to register or notify a law enforcement agency of an address change within ten days of the change is not a specific intent crime. Instead, the crime requires proof of something less than specific intent, i.e., proof of a “knowing exercise of choice.” In *People v Lockett*, ___ Mich App ___ (2002), the defendant notified his Department of Corrections probation officer of his address change but failed to notify the local law enforcement agency. At the conclusion of defendant’s preliminary examination, the district court dismissed the charge, concluding that defendant had not acted “willfully” by failing to notify the local law enforcement agency of his address change, even though the probation officer testified to specifically telling each of his probationers that address change updates must be made at the police station, not the probation office. The circuit court affirmed. After acknowledging that the issue of whether an omission can constitute “willfulness” is “an extremely murky area,” the Court of Appeals held first that defendant’s notification to his probation officer was insufficient to constitute notification to a “local law enforcement agency” under SORA. Next, the Court held that although it agreed with the district court’s conclusion that the term “willfully” under MCL 28.729 “requires something less than specific intent, [and] requires a knowing exercise of choice,” it disagreed with the district court’s conclusion that there was “no evidence” to support a finding of “willfulness.” The Court specifically found that the probation officer’s testimony was “sufficient to establish probable cause to believe that defendant knew he was required to update his address with the police department whenever he moved and that he purposely failed to do so.” *Id.* at ___. Thus, the Court remanded the case to the district court with instructions to bind defendant over for trial in circuit court.

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4. Double Jeopardy, Equal Protection, and Due Process Under U.S. Constitution

Replace the Note on p 530 with the following language:

The United States Supreme Court has held that due process does not require a state to provide a hearing to determine “current dangerousness” before it publicly discloses a convicted sex offender’s name, address, photograph, and description on its sex offender registry.

In *Connecticut Department of Public Safety v Doe*, ___ US ___ (2003), the respondent, a convicted sex offender, brought suit against the Connecticut Department of Public Safety on behalf of himself and other sex offender registrants, claiming that the public disclosure of names, addresses, photographs, and descriptions on Connecticut’s sex offender registry violates procedural due process under the Fourteenth Amendment. Respondent specifically argued that he and the other registrants were deprived of a liberty interest—reputation combined with status alteration under state law—without first being afforded a predeprivation hearing to determine “current dangerousness.” In reversing the judgments of the Court of Appeals and district court, which held that due process requires such a hearing, the Supreme Court began its analysis by first noting that under *Paul v Davis*, 424 US 693 (1976), “mere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest.” *Connecticut Department of Public Safety v Doe*, *supra* at ___. But the Court found it unnecessary to even address this specific question, because “due process does not entitle [respondent] to a hearing to establish a fact that is not material under the Connecticut statute.” *Id.* at ___. The Supreme Court stated that the fact at issue here, i.e., “current dangerousness,” is of no consequence under Connecticut’s sex offender registry because Connecticut requires registration “solely by virtue of [the individual’s] conviction record and state law.” Moreover, the Connecticut registry even provides a disclaimer on its website that a registrant’s alleged nondangerousness does not matter. Thus, the Supreme Court concluded as follows:

“In short, even if respondent could prove that he is not likely to be currently dangerous, Connecticut has decided that the registry information of *all* sex offenders—currently dangerous or not—must be publicly disclosed. Unless respondent can show that that *substantive* rule of law is defective (by conflicting with a provision of the Constitution), any hearing on current dangerousness is a bootless exercise. . . .

“Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme. Respondent cannot make that showing here.” [Emphases in original.] *Id.* at ____.

The Supreme Court decided this case only on procedural, not substantive, due process grounds, stating that “[because] respondent ‘expressly disavow[ed] any reliance on the substantive component of the Fourteenth Amendment’s protections, . . . we express no opinion on whether Connecticut’s Megan’s Law violates substantive due process. *Id.* at ____.”

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.4 DNA Identification Profiling System

E. Ordering and Distribution of Assessment Fees

1. Persons Convicted or Found Responsible

Replace the current text in Section 11.4(E)(1) with the following text beginning on the bottom of page 539:

After October 1, 2003, the court is no longer required to order the DNA assessment fee provided for in MCL 28.176(5). The court is still required to order the DNA testing; however, the corresponding assessment fee has been eliminated.

If the court ordered the DNA assessment fee prior to October 1, 2003, but the fee is collected on or after October 1, 2003, then the court must distribute the DNA assessment or portions of the DNA assessment as follows:

- ♦ 10% to the court.
- ♦ 25% to the county sheriff or other investigating law enforcement agency that collected the DNA sample as designated by the court.
- ♦ 65% to the State Treasurer for deposit in the Justice System Fund. MCL 28.176(8).

CHAPTER 11

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L. Pertinent Case Law Challenging Registration Act

4. Double Jeopardy, Equal Protection, and Due Process Under U.S. Constitution

Replace the last paragraph on page 529 and the text on page 530 with the following text:

*See the April 2003 update for a detailed discussion of *Connecticut Dep't of Public Safety v Doe*.

In *Fullmer v Michigan Dep't of State Police*, ___ F3d ___, ___ (CA 6, 2004), the Court held that the public registry provisions of Michigan's Sex Offenders Registration Act do not violate the procedural due process standards for sex offender registries that were set forth in *Connecticut Dep't of Public Safety v Doe*, 538 US 1 (2003).*